



March 23, 2005

ENGROSSED SENATE BILL No. 564

DIGEST OF SB 564 (Updated March 22, 2005 11:45 am - DI 101)

Citations Affected: IC 32-29; IC 32-30.

Synopsis: Mortgage foreclosure sales. Allows a petitioner in a mortgage foreclosure sale to request an auctioneer who must be approved by the court. Requires the auctioneer to schedule the auction. Allows a sheriff to charge a person enforcing a mortgage foreclosure judgment a fee of not more than \$200 for sheriff's sale costs. Prohibits a title insurance agent or a title insurance underwriter from making a disbursement from an escrow account unless certain conditions are met. Requires the deposit of funds received for an escrow transaction to be made into an escrow account unless the parties agree in writing to another arrangement.

Effective: July 1, 2005.

Clark, Kruse, Broden

(HOUSE SPONSORS — FOLEY, TORR, BURTON)

January 20, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

February 3, 2005, amended, reported favorably — Do Pass.

February 10, 2005, read second time, amended, ordered engrossed.

February 11, 2005, engrossed.

February 14, 2005, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Financial Institutions.

March 22, 2005, amended, reported — Do Pass.

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ES 564—LS 7897/DI 103+



March 23, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 564

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-29-1-12 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 12. (a) As used in this section, "agent" means a title**
4 **insurance agent or a title insurance underwriter.**

5 **(b) As used in this section, "banking day" means a day on which**
6 **the federal reserve bank is open to the public for carrying on**
7 **substantially all of the functions of the federal reserve bank.**

8 **(c) As used in this section, "check" means a negotiable**
9 **instrument that is drawn on or payable through an insured:**

10 (1) bank;

11 (2) savings and loan association;

12 (3) credit union; or

13 (4) savings bank;

14 **and contains an unconditional order to pay on demand a specified**
15 **sum of money.**

16 **(d) As used in this section, "escrow account" means a checking**
17 **account established by an agent with an insured:**

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- (1) bank;
- (2) savings and loan association;
- (3) credit union; or
- (4) savings bank;

that is used exclusively for the deposit and disbursement of funds for an escrow transaction.

(e) As used in this section, "escrow transaction" means a transaction in which a person deposits with an agent funds that are to be held until:

- (1) a specified event occurs; or
- (2) the performance of a prescribed condition.

(f) Funds received for an escrow transaction must be deposited in an escrow account unless the parties to the escrow transaction agree in writing to another arrangement.

(g) An agent may not make a disbursement from an escrow account unless the following conditions are met:

(1) The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been:

- (A) transferred electronically to or deposited into the escrow account of the agent and are available for withdrawal and disbursement; or
- (B) physically received by the agent before disbursement and are intended for deposit not later than the next banking day after the date of disbursement.

(2) The transfers or deposits described in subdivision (1) may be any of the following:

- (A) Cash or electronically transferred funds.
- (B) Certified checks, cashier's checks, checks, or money orders that are drawn on an existing account at a federally insured bank, savings and loan association, credit union, or savings bank.
- (C) A check issued by the United States or the state of Indiana, or by an agency, an instrumentality, or a political subdivision of the United States or the state of Indiana.
- (D) A check drawn on the escrow account of a title insurance company or title insurance agency, if the agent has reasonable and prudent cause to believe that sufficient funds are available for withdrawal in the account on which the check is drawn at the time of disbursement.
- (E) A personal check in a amount not to exceed one thousand dollars (\$1,000).

(h) An agent is not prohibited from advancing an amount not to

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1 exceed one thousand dollars (\$1,000) from an escrow account on
 2 behalf of a party to an escrow transaction for the purpose of
 3 paying incidental fees, including conveyance and recording fees.

4 Incidental fees may be paid in order to:

- 5 (1) effect and close the sale of;
- 6 (2) purchase;
- 7 (3) exchange;
- 8 (4) transfer;
- 9 (5) encumber; or
- 10 (6) lease;

11 residential real property that is the subject of the escrow
 12 transaction.

13 SECTION 2. IC 32-29-7-3 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) In a proceeding
 15 for the foreclosure of a mortgage executed on real estate, process may
 16 not issue for the execution of a judgment or decree of sale for a period
 17 of three (3) months after the filing of a complaint in the proceeding.
 18 However:

19 (1) the period ~~shall be:~~ is:

- 20 (A) twelve (12) months in a proceeding for the foreclosure of
 21 a mortgage executed before January 1, 1958; and
- 22 (B) six (6) months in a proceeding for the foreclosure of a
 23 mortgage executed after December 31, 1957, but before July
 24 1, 1975; and

25 (2) if the court finds that the mortgaged real estate is residential
 26 real estate and has been abandoned, a judgment or decree of sale
 27 may be executed on the date the judgment of foreclosure or
 28 decree of sale is entered, regardless of the date the mortgage is
 29 executed.

30 (b) A judgment and decree in a proceeding to foreclose a mortgage
 31 that is entered by a court having jurisdiction may be filed with the clerk
 32 in any county as provided in IC 33-32-3-2. After the period set forth in
 33 subsection (a) expires, a person who may enforce the judgment and
 34 decree may file a praecipe with the clerk in any county where the
 35 judgment and decree is filed, and the clerk shall promptly issue and
 36 certify to the sheriff of that county a copy of the judgment and decree
 37 under the seal of the court.

38 (c) Upon receiving a certified judgment under subsection (b), the
 39 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 40 premises or as much of the mortgaged premises as necessary to satisfy
 41 the judgment, interest, and costs at public auction at the office of the
 42 sheriff or at another location that is reasonably likely to attract higher

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competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. ~~However,~~ The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe; under subsection (b).

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SECTION 3. IC 32-29-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A sheriff shall offer to sell and sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer **requested by the petitioner and approved by the court** if:

(1) the court determines that a sale is economically feasible; or

(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) ~~An~~ **The sheriff shall engage the auctioneer engaged by a sheriff under this section not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and** conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale.

SECTION 4. IC 32-30-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) A sheriff shall sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or a creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of ~~an~~ **the auctioneer requested by the petitioner and approved by the court** if:

(1) the court determines that a sale is economically feasible; or

(2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) **The sheriff shall engage an** ~~the~~ auctioneer ~~engaged by a sheriff~~

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1 ~~under this section~~ **not later than fourteen (14) calendar days after**
2 **the date of the order entered by the court under subsection (b). The**
3 **auctioneer shall schedule the auction and** conduct the auctioneer's
4 activities as appropriate to bring the highest bid for the property on
5 foreclosure. The advertising conducted by the auctioneer is in addition
6 to any other notice required by law.

7 (d) The auctioneer's fee must be a reasonable amount stated in the
8 court's order. However, if the sale by use of an auctioneer has not been
9 agreed to by the creditors in the proceedings and the sale price is less
10 than the amount of the judgment and the costs and expenses necessary
11 to the satisfaction of the judgment, the auctioneer is entitled only to the
12 auctioneer's advertising expenses plus one hundred dollars (\$100). The
13 amount due to the auctioneer on account of the auctioneer's expenses
14 and fee, if any, must be paid as a cost of the sale from the proceeds
15 before the payment of any other payment.

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SENATE MOTION

Madam President: I move that Senator Kruse be added as second author and Senator Broden be added as coauthor of Senate Bill 564.

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COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 564, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, strike "an" and insert "**the**".

Page 1, line 13, delete "Upon entry of an order under subsection (b), the" and insert "**The**".

Page 1, line 14, strike "an" and insert "**the**".

Page 1, line 14, delete "." and insert "**not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b).**".

and when so amended that said bill do pass.

(Reference is to SB 564 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 564 be amended to read as follows:

Page 1, line 9, after "petitioner" insert **"and approved by the court"**.

Page 1, line 13, delete "not later than".

Page 1, delete line 14.

Page 1, line 15, delete "the court under subsection (b).".

Page 1, line 15, after "section" insert **"not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b)."**.

(Reference is to SB 564 as printed February 4, 2005.)

CLARK

 SENATE MOTION

Madam President: I move that Senate Bill 564 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 2. IC 32-29-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A sheriff shall offer to sell and sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer **requested by the petitioner and approved by the court** if:

- (1) the court determines that a sale is economically feasible; or
- (2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) ~~An~~ **The sheriff shall engage the auctioneer engaged by a sheriff under this section not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and** conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

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(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale."

Page 1, line 13, delete "not later than".

Page 1, delete line 14.

Page 1, line 15, delete "the court under subsection (b).".

Page 1, line 15, after "section" insert "**not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b).**".

Renumber all SECTIONS consecutively.

(Reference is to SB 564 as printed February 4, 2005.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 564, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-29-1-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 12. (a) As used in this section, "agent" means a title insurance agent or a title insurance underwriter.**

(b) As used in this section, "banking day" means a day on which the federal reserve bank is open to the public for carrying on substantially all of the functions of the federal reserve bank.

(c) As used in this section, "check" means a negotiable instrument that is drawn on or payable through an insured:

- (1) bank;**
- (2) savings and loan association;**
- (3) credit union; or**
- (4) savings bank;**

and contains an unconditional order to pay on demand a specified sum of money.

(d) As used in this section, "escrow account" means a checking account established by an agent with an insured:

- (1) bank;**
- (2) savings and loan association;**
- (3) credit union; or**
- (4) savings bank;**

that is used exclusively for the deposit and disbursement of funds for an escrow transaction.

(e) As used in this section, "escrow transaction" means a transaction in which a person deposits with an agent funds that are to be held until:

- (1) a specified event occurs; or**
- (2) the performance of a prescribed condition.**

(f) Funds received for an escrow transaction must be deposited in an escrow account unless the parties to the escrow transaction agree in writing to another arrangement.

(g) An agent may not make a disbursement from an escrow account unless the following conditions are met:

- (1) The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been:**
 - (A) transferred electronically to or deposited into the**

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escrow account of the agent and are available for withdrawal and disbursement; or

(B) physically received by the agent before disbursement and are intended for deposit not later than the next banking day after the date of disbursement.

(2) The transfers or deposits described in subdivision (1) may be any of the following:

(A) Cash or electronically transferred funds.

(B) Certified checks, cashier's checks, checks, or money orders that are drawn on an existing account at a federally insured bank, savings and loan association, credit union, or savings bank.

(C) A check issued by the United States or the state of Indiana, or by an agency, an instrumentality, or a political subdivision of the United States or the state of Indiana.

(D) A check drawn on the escrow account of a title insurance company or title insurance agency, if the agent has reasonable and prudent cause to believe that sufficient funds are available for withdrawal in the account on which the check is drawn at the time of disbursement.

(E) A personal check in a amount not to exceed one thousand dollars (\$1,000).

(h) An agent is not prohibited from advancing an amount not to exceed one thousand dollars (\$1,000) from an escrow account on behalf of a party to an escrow transaction for the purpose of paying incidental fees, including conveyance and recording fees. Incidental fees may be paid in order to:

- (1) effect and close the sale of;
- (2) purchase;
- (3) exchange;
- (4) transfer;
- (5) encumber; or
- (6) lease;

residential real property that is the subject of the escrow transaction.

SECTION 2. IC 32-29-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period ~~shall be:~~ is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

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(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected; and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale

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in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. ~~However,~~ The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe; under subsection (b)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 564 as reprinted February 11, 2005.)

BURTON, Chair

Committee Vote: yeas 10, nays 0.

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